IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES	)	
	)	**RULING: GOVERNMENT MOTION FOR MRE 505(g)(2) REDACTIONS - CIA WL TASK FORCE REPORT ON DISCRETE MATTER**
V	)	
	)	
	)	
MANNING, Bradley E., PFC	)	
U.S. Army, (b) (6)	)	
Headquarters and Headquarters Company,	)	
U.S. Army Garrison, Joint Base Myer-	)	DATED: 30 August 2012
Henderson Hall, Fort Myer, VA 22211	)	

On 3 August 2012, the Government filed a classified motion moving the Court to conduct an *ex parte* review of the CIA WL Task Force Report (CIA report) on a Discrete Matter and to authorize a substitution for the discoverable classified information in the CIA report IAW MRE 505(g)(2). The Court conducted an *in camera* review of both the original CIA report and the proposed substitution. After conducting the *in camera* review, on 29 August 2012, the Court and the Government held an *ex parte in camera* Article 39(a) session at a secure location where classified information may be discussed.

The concerns raised by the Court in the *ex parte in camera* Article 39(a) session have been addressed by the Government. In coming to this ruling, the Court has considered the factors requested by the Defense in its 21 August 2012 submission.

a) What is the extent of the redactions/substitutions?
b) Has the Government narrowly tailored the substitutions to protect a Governmental interest that has been clearly and specifically articulated?
c) Does the substitution provide the Defense with the ability to follow-up on leads that the original document would have provided?
d) Do the substitutions accurately capture the information within the original document?
e) Is the classified evidence necessary to rebut an element of the 22 charged offenses, bearing in mind the Government's very broad reading of many of these offenses?
f) Does the summary strip away the Defense's ability to accurately portray the nature of the charged leaks?
g) Do the substitutions prevent the Defense from fully examining witnesses?
h) Do the substitutions prevent the Defense from exploring all viable avenues for impeachment?
i) Does the Government intend to use any of the information from the damage assessments? If so, is this information limited to the summarized document provided by the Government? If the information intended to be used by the Government is not limited to the summarized document, does the Defense in fairness need to receive the classified portions of the documents to put the Government's evidence in proper context?
j) Does the original classified evidence present a more compelling sentencing case than the proposed substitutions by the Government?
k) Do the proposed substitutions prevent the Defense from learning names of potential witnesses?
l) Do the substitutions make sense, such that the Defense will be able to understand the context?

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m) Is the original classified evidence necessary to help the Defense in formulating defense strategy and making important litigation decisions in the case?
n) Is it unfair that the Government had access to the unclassified version of the damage assessment and the Defense did not? Does that provide a tactical advantage to the Government?

The CIA Report Substitution, as redacted, meets the Government's discovery obligations under *Brady* and RCM 701(a)(6) to disclose evidence tending to reasonably negate the guilt of the accused to an offense charged, reduce the degree of guilt to an offense charged, or reduce the punishment. The redacted information not disclosed to the Defense is not favorable, material to the preparation of the defense, or relevant and necessary for production under RCM 703(f).

The Government is ordered that no portion of the CIA Report not disclosed to the Defense will be used by the Government or any Government witness during any portion of the trial. This includes rebuttal and rule of completeness if Defense introduces or references anything in the substitution.

The substitution is sufficient for the Defense to adequately prepare for trial and represents an appropriate balance between the right of the Defense to discovery and the protection of specifically identified national security information that risks release of intelligence sources and methods.

RULING: The Classified motion by the Government to voluntarily provide limited disclosure under MRE 505(g)(2) for the CIA Report on a Discrete Matter is **GRANTED.**

So **ORDERED** this 30th day of August 2012.

DENISE R. LIND
COL, JA
Chief Judge, 1st Judicial Circuit